

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES FOR THE USE AND  
BENEFIT OF INTERSTATE HEATING, INC.,

**ANSWER**

Plaintiff,

6:24-CV-06342 (EAW)

v.

FRANKENMUTH MUTUAL INSURANCE  
COMPANY,

Defendant.

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Defendant Frankenmuth Mutual Insurance Company (hereinafter “Frankenmuth”), by and through its attorneys, Adams Leclair, LLP, for its Answer to the Complaint of Use Plaintiff Interstate Heating, Inc. (hereinafter “Interstate”), states as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “1” of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “2” of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “3” of the Complaint.
4. With respect to the allegations contained in paragraph “4” of the Complaint, admits that Frankenmuth is an insurance company domiciled in Michigan, which is now known as “Frankenmuth Insurance Company,” admits that Frankenmuth’s principal address is 1 Mutual Avenue, Frankenmuth, MI 48787, and denies the remaining allegations paragraph “4” of the Complaint.
5. Admits, upon information and belief, the allegations contained in paragraph

“5” of the Complaint.

6. With respect to the allegations contained in paragraph “6” of the Complaint, admits that Frankenmuth issued a certain payment bond to Foxtrot Construction Inc. (hereinafter “Foxtrot”), and respectfully refers the Court to the referenced Bond and the Miller Act (40 U.S.C. § 3131 *et seq.*) for a statement of its terms, conditions, and legal effect, and denies the remaining allegations in paragraph “6” of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “7” of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “8” of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “9” of the Complaint.

#### **First Cause of Action – Miller Act**

10. Frankenmuth repeats and realleges its responses to paragraphs “1 through 9” as set forth fully and at length herein.

11. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “11” of the Complaint.

12. Denies the allegations contained in paragraph “12” of the Complaint.

13. Denies the allegations contained in paragraph “13” of the Complaint.

14. Denies the allegations contained in paragraph “14” of the Complaint.

15. Denies any allegation not heretofore specifically admitted, denied or otherwise controverted.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

16. Plaintiff's claims are barred, in whole or in part, because per the Subcontract, Plaintiff is obligated to arbitrate any dispute between Plaintiff and Foxtrot.

**SECOND AFFIRMATIVE DEFENSE**

17. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to fully and/or properly perform its contractual obligations.

**THIRD AFFIRMATIVE DEFENSE**

18. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to state a claim upon which relief can be granted.

**FOURTH AFFIRMATIVE DEFENSE**

19. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

20. Upon information and belief, this Court lacks subject matter jurisdiction over some or all Plaintiff's claims.

**SIXTH AFFIRMATIVE DEFENSE**

21. Plaintiff's claims are barred, in whole or in part, because, upon information and belief, some or all the damages sought by Plaintiff are not recoverable under the payment Bond.

**SEVENTH AFFIRMATIVE DEFENSE**

22. Plaintiff's claims are barred, in whole or in part, by the express and/or implied terms of any applicable contract.

**EIGHTH AFFIRMATIVE DEFENSE**

23. Plaintiff's claims are barred, in whole or in part, by payment and release.

**WHEREFORE**, Defendant demands the dismissal with prejudice of Plaintiff's Complaint, along with reasonable attorneys' fees, costs of suit, interest and any other relief the Court deems just and proper.

Dated: August 12, 2024  
Rochester, New York

**ADAMS LECLAIR LLP**

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